

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

OP (CAT).No. 21 of 2015 (Z)

AGAINST THE ORDER IN OA 180/1084/2014 of CENTRAL
ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH, DATED 8/1/2015.

PETITIONERS:

1. K.PARTHA SARADHI MENON, AGED 50 YEARS,
S/O.LATE V.GOVINDANKUTTY NAIR, ENGINEER MATE,
CUSTOMS MARINE WING, R&I UNIT, WILLINGTON ISLAND,
COCHIN-9.

2. E.MANOCHARAN, AGED 47 YEARS,
S/O.LATE V.T.GOPALANKUTTY NAIR, ENGINEER MATE,
SEA PATROLLING UNIT, BYEPORE, KOZHIKODE-673 015.

BY ADVS.SRI.C.S.GOPALAKRISHNAN NAIR
SMT.CHANDINI G.NAIR

RESPONDENT(S) :

1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF REVENUE,
NORTH BLOCK, NEW DELHI-110 001.

2. CHAIRMAN,
CENTRAL BOARD OF EXCISE & CUSTOMS,
NORTH BLOCK,
NEW DELHI-110 001.

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3. CHIEF COMMISSIONER OF CENTRAL
EXCISE & CUSTOMS,
CENTRAL REVENUE BUILDINGS, I.S.PRESS ROAD,
COCHIN-682 018.

4. COMMISSIONER OF CENTRAL EXCISE & CUSTOMS,
CENTRAL REVENUE BUILDINGS, I.S.PRESS ROAD,
COCHIN-682 018.

5. COMMISSIONER OF CUSTOMS (PREVENTIVE),
CATHOLIC CENTRE, BROADWAY, COCHIN-682 031.

6. COMMISSIONER OF LOGISTICS,
CUSTOMS & CENTRAL EXCISE, 4TH FLOOR, 'A' WING,
LOK NAYAK BHAVAN, KHAN MARKET, NEW DELHI-110 511.

7. ADDITIONAL DIRECTOR (ADMN,
DIRECTORATE OF LOGISTICS, CUSTOMS & CENTRAL EXCISE
4TH FLOOR, 'A' WING, LOK NAYAK BHAVAN,
KHAN MARKET, NEW DELHI-110 511.

R1-R7 BY ADV. SRI.N.NAGARESH,
ASSISTANT SOLICITOR GENERAL

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON
30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP (CAT) .No. 21 of 2015 (Z)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1- TRUE COPY OF OA NO.1084/2014 FILED BY THE PETITIONER
BEFORE THE HON'BLE CAT, ERNAKULAM BENCH.

P2- TRUE COPY OF THE ORDER DT. 8.1.2015 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN OA
NO.180/001084/2014.

//true copy//

P.S. to Judge

**THOTTATHIL B. RADHAKRISHNAN &
K. HARILAL, JJ.**

O.P. (CAT) No.21 of 2015

Dated this the 30th day of January, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

We heard the learned counsel for the petitioners and the learned Assistant Solicitor General of India.

2. This original petition under Article 227 of the Constitution of India is filed challenging Ext.P2 decision of the Central Administrative Tribunal dismissing the original application filed by the petitioners in relation to the recruitment of Engineer (Marine) on the basis of Annexure-A5 employment notice. It is not in dispute that the said notice is in conformity with the statutory recruitment rules issued by the competent authority in exercise of powers under Article 309 of the Constitution of India. There are three modes of recruitment. One is by promotion; the other by deputation

and third by direct recruitment. The petitioners are in the feeder category from which promotions could be made. They are, however, not eligible to be considered for promotion because they do not possess the requisite experience of 10 years in the feeder category. They challenged the employment notice which is issued to fill up the post of Engineer (Marine) by way of re-employment of working/ex-sailors of Indian Navy and Central Government Offices. Being permanently employed as Engineer Mate in the regular establishment of the Customs Department, the petitioners cannot be considered for re-employment.

3. We see the heartburn of the petitioners; that is to say, they are fully qualified, but without the requisite experience for promotion and that they stand to say that from the year of their recruitment, there was no Engineer (Marine) in service and they were discharging duties and responsibilities attached to that post as well, though they were not paid anything more than what was due to the Engineer Mate. Under such circumstances, the learned counsel for the petitioners requested that there may be a direction, at least, to consider the petitioners, if other hands were not available for recruitment in terms of Annexure-A5

employment notice. That is not something that could be done within the format of Annexure-A5 employment notice which is only for appointment by way of re-employment of working/ex-sailors of Indian Navy and Central Government Offices in terms of the applicable recruitment rules, which are not under challenge. We have to, therefore, dissuade ourselves from issuing any such direction, more particularly because if we were to issue any such order, that would contradict the statutory rules. That cannot be done.

4. For the aforesaid reasons, we do not see any legal infirmity or jurisdictional error in the decision of the Tribunal warranting interference under Article 227 of the Constitution of India.

In the result, this original petition is dismissed without prejudice to issues beyond those raised in the original petition and before the Tribunal in this round.

Sd/-

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge